

§ 301.6231(d)-1 Time for determining profits interest of partners for purposes of sections 6223(b) and 6231(a)(11).

(a) *Partner owns interest at close of year.* For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(11) (relating to 5-percent groups), except as otherwise provided in this section, the profits interest held by a partner, directly or indirectly through one or more pass-thru partners, in a partnership (the source partnership) to which subchapter C of chapter 63 of the Internal Revenue Code applies shall be determined at the close of the source partnership's taxable year.

(b) *Partner does not own interest at close of year.* If the entire direct and indirect interest of a partner in a source partnership is terminated by virtue of a disposition by such partner of such interest (or by virtue of the disposition of an interest held by one or more pass-thru partners through which the partner holds an interest), then the profits interest of such partner in the source partnership shall be measured as of the moment before the disposition causing such termination. The preceding sentence shall not apply with respect to a termination if subsequent to such termination and before the close of the source partnership's taxable year the partner acquires a direct or indirect interest in the source partnership.

(c) *Disposition of last remaining portion of interest is disposition of entire interest.* If a partner (or a pass-thru partner through which a partner holds an interest) makes several partial dispositions of an interest in a source partnership during a taxable year of the source partnership, paragraph (b) of this section will apply with respect to the disposition which causes a termination of the partner's entire direct and indirect interest in the source partnership.

(d) *No profits interest in certain cases.* If—

(1) The interest of a partner in a partnership is entirely disposed of before the close of the taxable year of the partnership; and

(2) No items of the partnership for that taxable year are required to be taken into account by the partner,

then that partner has no profits interest in the partnership for that taxable year.

(e) *Examples.* The provisions of this section may be illustrated by the following examples. Assume in all examples that there have been no reacquisitions prior to the close of the source partnership's taxable year. The examples are as follows:

Example 1. B holds an interest in partnership P through T, a pass-thru partner. P uses a fiscal year ending June 30 as P's taxable year; B and T use the calendar year as the taxable year. As of the close of P's taxable year ending June 30, 2002, T holds an interest in P and B holds an interest in P through T. The profits interest held by B in P through T for that year is determined as of June 30, 2002.

Example 2. Assume the same facts as in *Example 1*, except that B sold the entire interest that B held in P through T on November 5, 2001. The profits interest held by B in P through T for P's taxable year ending June 30, 2002, is determined as of the moment before the sale on November 5, 2001.

Example 3. C holds an interest in partnership P through T, a pass-thru partner. C, P, and T all use the calendar year as the taxable year. T disposes of T's interest in P on June 5, 2002. The profits interest held by C in P through T for 2002 is determined as of the moment before the disposition on June 5, 2002.

Example 4. Assume the same facts as in *Example 3*, except that C sold C's entire interest in T (and, therefore, C's entire interest that C held in P through T) on March 15, 2002. The profits interest held by C in P through T for 2002 is determined as of the moment before the sale on March 15, 2002.

Example 5. On January 1, 2002, D held a 2 percent profits interest in partnership P. Both D and P use the calendar year as the taxable year. On August 1, 2002, D transfers three-fourths of D's profits interest in P to E. On September 1, 2002, D sells D's remaining .5 percent profits interest in P to F. For purposes of sections 6223(b) and 6231(a)(11), D had a .5 percent profits interest in P for 2002.

Example 6. Assume the same facts as in *Example 5*, except that on January 1, 2002, D also held a 1 percent profits interest in partnership P through T, a pass-thru partner which also uses the calendar year as the taxable year. In addition to the sale to E on August 1, 2002, D sold a portion of D's interest in T on December 1, 2002, such that after the sale, D held a .2 percent profits interest in P through T. D made no other transfers of interests in either P or T. For purposes of sections 6223(b) and 6231(a)(11), D had a .7 percent profits interest in P for 2002.

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(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(d)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50562, Oct. 4, 2001]

§ 301.6231(e)-1 Effect of a determination with respect to a nonpartnership item on the determination of a partnership item.

(a) *In general.* The determination of an item after it has become a nonpartnership item with respect to a partner is not controlling in the determination of that item with respect to other partners. Thus, for example, the determination by a court in a separate proceeding relating to a partner that a certain partnership expenditure was deductible does not bind either the Internal Revenue Service or the other partners in a later partnership or other proceeding.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(e)-1T contained in 26 CFR part 1, revised April 1, 2001.

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§ 301.6231(e)-2 Judicial decision not a bar to certain adjustments.

(a) *In general.* A court decision with respect to a partner's income tax liability attributable to nonpartnership items shall not be a bar to further proceedings with respect to that partner's income tax liability if that partner's partnership items become nonpartnership items after the appropriate time to include such nonpartnership items in the earlier court proceeding has passed. Thus, the Internal Revenue Service could issue a later deficiency notice for the same taxable year with respect to that partner or that partner could bring a refund suit with respect to those items that have become nonpartnership items.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4,

2001, see § 301.6231(e)-2T contained in 26 CFR part 1, revised April 1, 2001.

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§ 301.6231(f)-1 Disallowance of losses and credits in certain cases.

(a) *Application of section.* This section applies if—

(1) A partnership, whether domestic or foreign, that is required to file a return under section 6031 for a taxable year fails to file the return within the time prescribed; and

(2) At any time after the close of that taxable year, either—

(i) The tax matters partner of that partnership resides outside the United States; or

(ii) The books and records of that partnership are maintained outside the United States.

(b) *Computational adjustment permitted if return is not filed after mailing of notice.* Except as otherwise provided in paragraph (c) of this section, if—

(1) This section applies with respect to a partnership for a partnership taxable year;

(2) The Internal Revenue Service mails notice to a partner that the losses and credits arising from that partnership for that year will be disallowed to that partner unless the partnership files a return for that year within 60 days after the date on which the notice is mailed; and

(3) The partnership fails to file a return for that year within that 60-day period, the Internal Revenue Service may, without conducting a partnership-level proceeding, mail a notice of computational adjustment to that partner to reflect the disallowance of any loss (including a capital loss) or credit arising from that partnership for that year.

(c) *Restriction on notices under paragraph (b) of this section.* Neither the notice referred to in paragraph (b)(2) of this section nor the notice of computational adjustment referred to in paragraph (b) of this section may be mailed on a day on which—

(1) The tax matters partner of the partnership resides within the United States; and

(2) The books and records of the partnership are maintained within the